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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 **KATHLEEN ANNE HOLT**
8671 Lemon Avenue, #6
13 La Mesa, CA 91941

14 **Registered Nurse License No. 573185**

15 Respondent.

Case No. **2010 - 640**

ACCUSATION

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17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
21 of Consumer Affairs.

22 2. On or about October 19, 2000, the Board of Registered Nursing issued Registered
23 Nurse License Number 573185 to Kathleen Anne Holt (Respondent). The Registered Nurse
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on April 30, 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

STATUTORY PROVISIONS

6. Section 2761, subdivision (a) of the Code states that the board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for unprofessional conduct.

7. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

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COST RECOVERY

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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1 DRUGS

2 9. Radiesse is the brand name of an injectable filler for the correction of moderate to
3 severe facial wrinkles and folds. Radiesse is a prescriptive drug and is a dangerous drug pursuant
4 to Business and Professions Code section 4022.

5 10. Lidocaine (injection) is the name of a generic drug that causes numbness or loss of
6 feeling in an area of the body. It is given before or during surgery or dental work. It is a
7 prescriptive drug and is a dangerous drug pursuant to Business and Professions Code section
8 4022.

9 FACTS

10 11. From May 2006 through May, 2007, Respondent was employed by Dr. R.S. as a
11 Botox and injectable filler nurse. On May 1, 2006, Respondent signed a nursing contract with Dr.
12 R.S. in which Respondent agreed that all records, including patients' records, are governed by
13 HIPAA regulations and are the clinic's exclusive property, that Respondent will maintain the
14 confidentiality of all records and will not remove any such records from the clinic without both
15 the express written consent of the patient and the clinic.

16 12. On or about May 19, 2007, Respondent was terminated by Dr. R.S. for offering
17 patients unauthorized treatments and discounts.

18 13. On or about August 14, 2007, Respondent was hired by Dr. J.H. as a Botox and
19 injectable filler nurse at his clinic. Respondent told Dr. J. H. that she had a loyal following of
20 clients who were calling her with hopes of continuing to receive their treatments from her.

21 14. On or about August 16, 2007, Dr. J.H.'s office manager and support staff observed a
22 stack of computer print-outs on top of a desk. The print-outs listed the names of patients, their
23 telephone numbers and the treatment provided. Dr. J.H. recognized the print-outs to have been
24 generated from a patient scheduling system that was not used in his clinic. When Dr. J.H.
25 confronted Respondent about them, Respondent admitted they were patient schedules she
26 obtained from Dr. R.S.'s computer server while Respondent was at home. Dr. J.H. terminated
27 Respondent on August 17, 2007.
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15. Approximately one week later, Respondent contacted Dr. J.H.'s clinic to retrieve a basket of items she left at the clinic. The items included 20 packages of Prevage (anti-wrinkle cream), two unopened vials of 0.5 ml Radiesse, three syringes of Radiesse (one was labeled with a patient's name and the other two were partially filled syringes labeled "Kathleen"), several unopened syringes, several alcohol prep pads, one tube of triamcinolone acetonide¹ and a 50 mg vial of lidocaine, a prescriptive drug. These items were items Respondent had taken from Dr. R.S.'s clinic and had brought to Dr. J.H.'s clinic.

16. An investigation was conducted by the La Mesa Police Department. During the investigation, interviews were conducted of several of Dr. R.S.'s patients whose information was contained on the computer print-outs removed by Respondent from Dr. R.S.'s clinic. These patients included Agnes S., Martha F., Teri S., Suzanne S., Corinne H., Lori S., and Windi B. They advised the investigating officer that they had been contacted by Respondent informing them that she was working at a new clinic, which she considered to be nicer and less expensive than Dr. R.S.'s clinic, and suggesting that they come to Respondent at her new clinic for their treatments. These patients denied any knowledge that Respondent had taken their personal information from Dr. R.S.'s office. They denied authorizing Respondent to remove their personal information from Dr. R.S.'s office and further stated that they had not given Respondent permission to copy or remove their personal information from Dr. R.S.'s office.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct-HIPAA)

17. Respondent is subject to disciplinary action under Code section 2761(a) for unprofessional conduct in that Respondent removed patient information from Dr. R.S.'s clinic without the written knowledge and consent of the patients and used the information for the purpose of soliciting future business, in violation of the Health Insurance Portability and Accountability Act of 1996, as more particularly set forth in paragraphs 12-16 above and incorporated in full herein.

¹ Triamcinolone acetonide is a corticosteroid used in the treatment of allergies and skin conditions.

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